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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

12-19

No. ~~895~~ 23-33

HEBER KIMBALL CLEVELAND,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

No. ~~896~~

HEBER KIMBALL CLEVELAND,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

No. ~~897~~

HEBER KIMBALL CLEVELAND,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

No. ~~898~~

DAVID BRIGHAM DARGER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

CLAUDE T. BARNES,
J. H. MCKNIGHT,
KNOX PATTERSON,
ED. D. HATCH,
O. A. TANGREN,
Counsel for Petitioners.

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No. 899

VERGEL Y. JESSOP, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA

No. 900

THERAL RAY DOCKSTADER, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA

No. 901

L. R. STUBBS, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA

No. 902

FOLLIS GARDNER PETTY, *Petitioner,*

vs.

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No. 903

WILLIAM CHATWIN, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA

No. 904

CHARLES F. ZITTING, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA

No. 905

EDNA CHRISTENSEN, *Petitioner,*

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THE UNITED STATES OF AMERICA

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

To the Honorables, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Heber Kimball Cleveland, David Brigham Darger, Vergel Y. Jessop, Theral Ray Dockstader, L. R. Stubbs, Follis Gardner Petty, William Chatwin, Charles F. Zitting and Edna Christensen, respectfully submit their petition for writs of certiorari to review the decree of the United States Circuit Court of Appeals from the Tenth Circuit in the above entitled case.

The Circuit Court of Appeals for the Tenth Circuit has affirmed the decision and judgment of the District Court of the United States for the District of Utah, Central Division, finding the appellants guilty and imposing sentence upon them.

Statement of the Cases

These are separate appeals from the judgment of guilty and imposition of sentence by the District Court. The several cases are laid under either the Mann Act, or the Lindberg Act,

One of the primary issues involved is: Does either of said Acts have application to the respective cases in which they form the basis of the charges?

In the Mann Act Cases it is stipulated that the testimony of the Government, if presented would be to the effect that plural marriage, polygamy in common parlance, but in truth that form of plural marriage designated by the revelations of Joseph Smith, the "Mormon" Prophet as "Celestial Marriage", was the status of the defendants, during the course of which they transported such plural, or "celestial" wife or wives across State lines. To such each defendant entered a plea of "Not Guilty", which still is of full effect.

In the Lindberg Act Cases, the testimony of the Government is stipulated in like manner, with like pleas entered. In these cases, however, no plurality of marriage was either in esse at the time of the transportation, or given effect or entered into during or at the termination of the transport. There the stipulated testimony would not show a polygamous relation entered into by reason of such transport.

In each case where "celestial" marriage is an issue, it is further stipulated that the relationship was the result of the sincere religious belief of each defendant that they were, in fact, obeying the very command of God.

In no case, save one, does it appear that the status of either defendant or any "celestial wife" was altered over its establishment prior to the transportation in interstate travel.

In but one case, (No. 2945, Record p. 7), does any plural, or "celestial" marriage appear as entered into subsequently to any interstate journey. That is the case of *United States* v. *Cleveland*, No. 2945, in which it appears that the "celestial marriage" was performed some days following the transportation, in the State to which the transport was made, during which interim no sexual relationship was engaged in, though the opportunity was fully present and apparent.

In the Lindberg Act cases, the stipulated testimony of the Government shows no transportation for the purpose of any marriage in plurality. There the husband was a single man; the wife was a single girl, and the purpose of the transportation was to have a marriage performed between them in a state where such marriage would be regarded as being lawful. No "celestial" or polygamous marriage is there involved, as any issue relating to the transportation of the subsequent legal wife.

In every case, stipulation as to what the testimony of witnesses for the Government would show was entered into.

In every case a plea of "Not Guilty" was entered. No such plea is yet withdrawn or altered.

Jury was waived in every case, and every case was submitted to the trial court upon such stipulated Government testimony and such pleas of Not Guilty.

The trial Court found every defendant guilty as charged; denying time beyond a few hours, in which to prepare, serve and file motions for new trials.

The Circuit Court of Appeals, 10th Circuit, has affirmed the findings and sentence of the trial court in every case.

All of the cases were consolidated for trial: and all were so consolidated on appeal to the Circuit Court of Appeals, and all were treated and considered under such consolidations by each said Court.

These cases are here consolidated in the like manner in this petition.

The reasons for such consolidations are these:

Motions to Quash, except for incidental matters, are identical;

The Trial Court's decision embraced each case;

The Stipulations, in the main are alike, although they differ in some of their details;

In each case the same Constitutional questions were put in issue;

In each case, the identical claim of right under the 9th Article of the Treaty of Guadalupe-Hidalgo is put in issue;

In each case the applicability of each, the Mann Act or the Lindberg Act, respectively, was made an issue;

In each case the issue of the requisite criminal intent was put in issue, as the same must be found resident in the same mind at the same time with the religious belief as to the verities of "celestial marriage" as an actual command of the Almighty;

In each case, the criminal intent requisite to a finding of guilt of intent to "prostitute" a woman, or women, or to "debauch" a woman, or women, was put in issue;

In each case, the applicability of the rule of "*ejusdem generis*" was put in issue;

In each case, the power of the Federal Government to declare upon the morals or marriage was put in issue;

In each case the power of the Federal Government to regulate the practice of, or punish any form of marriage, was put in issue;

In each case, whether or not the facts sufficiently showed the charge to be *malum in se*, or *malum prohibitum* only, was made an issue;

In each case, the power of the Federal Government to proscribe, in areas other than those in which it has exclusive jurisdiction, a form or type of marriage, or to punish therefor, was made an issue;

In each case the power of the Federal Government to regulate, in States, or proscribe acts *malum in se* was put in issue;

In each case, the controlling "purpose" and design of each defendant was put in issue;

In each case, the issue of the power of the Federal Government to proscribe, and punish for, a marital status, was put in issue;

In each case, the power of the Government to declare upon the truth and verity of a religious doctrine is put in issue;

Other issues are also identical in the several cases.

Questions Presented

The record presents these questions: As to the Mann Act cases:

1. Is the Mann Act to be applied to persons already having a status in plural, "celestial", religious marriage, resident in a State, when they cross state lines accompanied by, or are joined in another State by, a plural wife of the like status, all the while each such person being of sincere and devout religious belief that such is a status ordained of God?

2. Can one, entertaining the religious belief, as taught and enjoined by the Prophet Joseph Smith, and so practicing such religiously, at the same time have resident in him

the criminal intent to "prostitute" or to "debauch" requisite to being found guilty under the Mann Act?

3. Does the Federal Government have the power to declare upon the verities of a religious tenet?

4. Does the Federal Government have the power to declare upon the morals of a religious practice?

5. Does the Mann Act apply to a form of marriage, religiously believed to be the "command of God"?

6. Does the stipulated testimony show an act malum in se?

7. Does the Federal Government have jurisdiction, within the areas of States of the Union, to declare a marriage, no matter what its form or basis, prohibited by the Mann Act, where the same is entered into in good faith and for religious reasons?

8. Can the violation of a State prohibitory law, supply the criminal intent necessary to a charged violation of the Mann Act?

9. If issue number 8 be affirmed: Then would it make any difference that such act was done in sincere religious practice of a claimed "command of God"?

10. Do these defendants have any claimable right under the Ninth Article of the Treaty of Guadalupe-Hidalgo?

11. May the Federal Government proscribe a religious belief and practice of a religious marriage practice, and punish therefor?

12. Was any intent resident in the defendants in the cases laid under the Lindbergh Act to enter into any plural marriage?

13. (a) Is the Lindbergh Act applicable to a man who, to make a pregnant girl his legal wife, takes her across

State lines for such purpose despite the non-consent thereto of her parents, she being not sui juris?

(b) Does a prior marriage, not recognized by the law of the State, between such man and pregnant girl, in any wise affect the interstate travel so as to bring the matter within the inhibitions of the Lindbergh Act?

14. As to case No. 2945, *United States* v. *Cleveland*, does an intent to take a woman across State lines, there to await a religious ceremony of marriage sincerely believed in by both the woman and the man as the "command of God," and not having sexual relations until after such ceremony; and with no thought of termination of that relationship for both "time and eternity," and with the religious belief that any sexual relation of the woman thereafter with any other man would render her deserving of death, give rise to that criminal intent to either "prostitute" or "debauch" such woman within the meaning, purpose and intent of the Mann Act?

The decision ignores the fact that it is the sole prerogative of the respective States of this Union to legislate upon the subject of marriage; that polygamy is not a common law offense; that polygamy is not malum in se, but is merely malum prohibitum; that hence, its practice cannot supply the requisite criminal intent under the Mann Act.

The decision further ignores the fact that these parties, with the one exception in case No. 2945, for long had been in an established marital status in the state of Utah, prior to any interstate travel by them, and that, therefore, sexual intercourse, if indulged in the State to which they traveled was but an incident to their established status, not the "purpose" actuating the travel interstate; that such could not be any form of "prostitution" or "debauchery" proscribed by the Mann Act.

In this regard the decision, in effect, reverses the previous decisions of said Circuit Court of Appeals in the cases of:

Yoder v. *United States*, 80 F. 2d 665 (CCA 10th);
Drosser v. *United States*, 16 F. 2d 833 (CCA 10th);

as well as other cases to the like effect, viz:

Van Felt v. *United States*, 240 F. 346 (CCA 4th);
Sloan v. *United States*, 287 F. 91 (CCA 8th),

and the decision disregards the last word of this Court in the case of:

Mortensen v. *United States*, 64 S. Ct. 1037, 322 U. S. 369,

and the declarations of this Court in

United States v. *Ballard*, 322 U. S. 78, 64 S. Ct. 882,

and the declarations of no inference against religion stated in:

Church of the Holy Trinity v. *United States*, 143 U. S. 457.

The decision here is in conflict with the decisions of this Court; and it involves the important question of how far the Federal Government may look into and regulate and declare upon the verities and morals of divers forms of marriage in its enforcement of the Mann Act, and the Lindbergh Act, matters not yet determined.

WHEREFORE, your Petitioners respectfully pray that writs of certiorari issue herein under the seal of this Court directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the Circuit Court of Appeals had in said causes, to the end that these causes

may be reviewed and determined by this Honorable Court as provided by the Statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as to this Court may seem proper.

HEBER KIMBALL CLEVELAND,
DAVID BRIGHAM DARGER,
VERGEL Y. JESSOP,
THERAL RAY DOCKSTADER,
L. R. STUBBS,
FOLLIS GARDNER PETTY,
WILLIAM CHATWIN,
CHARLES F. ZITTING,
EDNA CHRISTENSEN.

CLAUDE T. BARNES,
J. H. MCKNIGHT,
KNOX PATTERSON,
EDWIN D. HATCH,
O. A. TANGREN,
Counsel.

Affidavit of Verification of Petition for Certiorari

UNITED STATES OF AMERICA,
State of Utah,
County of Salt Lake, ss:

HEBER KIMBALL CLEVELAND, being duly sworn, deposes and says: I am one of the petitioners in the above entitled action, and by authority make this verification for and in behalf of all of the petitioners. I have read the foregoing petition and the same is true as I verily believe.

HEBER KIMBALL CLEVELAND.

Sworn to before me this 17 day of January, 1945.

NEPHI JENSEN,
[Seal.] *Notary Public.*
Residing at Salt Lake City, Utah.

Certificate of Counsel

We hereby certify that we have examined the foregoing petition for a writ of certiorari, and in our opinion such petition is well founded and should be granted by this Honorable Court, and said petition is not presented for purposes of delay.

CLAUDE T. BARNES,
J. H. MCKNIGHT,
KNOX PATTERSON,
EDWIN D. HATCH,
O. A. TANGREN,
Counsel for Petitioners.

BRIEF SUPPORTING APPLICATION FOR WRITS OF CERTIORARI

The opinion in the District Court of the United States for the District of Utah in the foregoing cases was rendered May 22, 1944, by Judge T. Blake Kennedy and is reproduced in full in the Clerk's Transcripts of Records (p. 15); The opinion of the Circuit Court of Appeals for the Tenth Circuit was rendered on January 4, 1945, by Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Court Judges; and it is given in full in the Record herein at page 139 et seq. So far as we know the opinions have not yet been published.

Statement of Jurisdiction Ground

The jurisdiction of the Supreme Court of the United States to review by writ of certiorari the judgment and decision entered in this cause is conferred by Act of Congress February 13, 1925, C. 229, p. 1, 43 Stat. 938; Judicial Code p. 240 amended; 28 U. S. C. A. p. 347, commonly known as "Certiorari to Circuit Courts of Appeals".

Statutes Involved

The statutes, the applicability of which is involved, are: the white slave or Mann Act (Act of Congress of June 25, 1910, C. 395 P 2, 36 Stat. 825, 18 USCA S. 398) as follows:

> Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall

knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

and the Kidnapping Act (Act of Congress of June 22, 1932, C. 271, P. 1, 47 Stat. 326, as amended May 18, 1934, C. 301, 48 Stat. 781, 18 USCA S 408 a) as follows:

Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: Provided, That the failure to release such person within seven days after he shall

have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.

Treaty of Peace (Etc.) of Guadalupe Hidalgo February 2, 1848, between Republic of Mexico and the United States (7 Fed. Stat. Ann. p. 694-703):

Article IX: "The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

Judgment and Decision Involved

The judgment and decision involved is that rendered by the Circuit Court of Appeals (Tenth Circuit) on January 4, 1945, affirming the judgment and sentences of the District Court of the United States for the Central Division of Utah, rendered June 7, 1944.

The defendants were practicing celestial marriage under the doctrines of the original Mormon Church, and these cases are the attempt of the government to apply the Mann Act and the Kidnapping Act to them. The cases were all submitted to the Court on stipulations concerning what the government's testimony would be; juries were waived; not guilty pleas were entered; the Court rendered its decision and verdict in one consolidated case opinion. The cases were thus consolidated on appeal for the short stipu-

lations all brought up the essential fact that the defendants were already "married" under the religious belief before crossing state lines and most of them already had children.

Every step of the way the defendants urged their rights and immunities under the first, fifth, sixth and fourteenth Amendments to the Constitution of the United States; and maintained that since control of marriage was never delegated by the states to the federal government, the federal government cannot choose which form of marriage it will recognize in the enforcement of the Mann Act and the Lindbergh Act.

Every step of the way the defendants urged their rights under the provisions of the treaty of Guadalupe Hidalgo, but they were ignored.

Cases Sustaining Jurisdiction

This Court has unquestioned jurisdiction to review by certiorari White Slave Act cases where the question of "purpose", "intent" and the applicability of the statute to the testimony is involved—

Caminetti v. *U. S.* (Cal. 1917) 37 S. Ct. 192, 242 U. S. 470, 61 L. Ed. 442, L.R.A. 1917 T, 502, Ann. Cas. 1917 B. 1168.

Mortensen v. *U. S.*, 1944, 64 S. Ct. 1037, 88 L. Ed. —.

Gooch v. *U. S.* (1936), 56 S. Ct. 395, 297 U. S. 124, 80 L. Ed. 522.

The Application for Writ of Certiorari Is Timely Taken.

The judgment of the Circuit Court of Appeals was entered on January 4, 1945, and on January 5, 1945, the said Court entered an order staying the mandates in each of the cases for a period of thirty days to give petitioners time to file a certiorari petition, record and brief in this Court and file with the Clerk of said Circuit Court the Certificate of the Clerk of the Supreme Court of the United States to that effect.

The Facts

The facts are set forth in the Record at pages 7, 67, 97, 116, 129; and are summarized in the opinion of the Circuit Court of Appeals (Record p. 140). In the Mann Act cases the facts all amount to this: the defendants (except in one case) before crossing state lines were already "married" to the women involved by a celestial ceremony of the original Mormon Church, but a marriage illegal under the laws of Utah; and in the one case a "marriage" of like character took place after the crossing of a state line and before sexual intercourse. In the Kidnapping Case the girl involved was subnormal mentally but "married" by this ceremony and pregnant before crossing a state line with her mate to get legal marriage performed.

Errors to Be Urged

I

The Court erred in affirming the Court's failure and refusal to grant the defendant's Motion to Quash the information in said cause.

II

The Court erred in affirming the Court's failure and refusal to find that the grand jury, finding the True Bill in said cause, was prejudiced and biased against this defendant.

III

The Court erred in finding the facts in the case, and the prosecution thereof, were applicable to Section 398, T. 18 U.S.C.A., known as the Mann Act.

IV

The Court erred in denying defendants' constitutional rights, under the Constitution of the State of Utah, under

Article 1, sections 1, 4, 7, 11, 12 and 24; Article 3, and Article 6, sub-sections 5 and 18; and likewise erred in denying defendants' constitutional rights under the 1st, 4th, 5th, 6th, 8th and 14th amendments to the Constitution of the United States.

V

The Court erred in disregarding defendants' rights under the Treaty of Guadalupe Hidalgo, in the free exercise of his religion.

VI

The Court erred in finding defendants had criminal intent in the commission of the acts charged in the informations, and shown by the stipulated testimony in said causes.

VII

The Court erred in finding that defendants violated the laws of the State of Utah, in connection with Federal statutes so authorizing federal prosecution.

VIII

The Court erred in failing to pass upon the issue, that the transportation of plural wives, as shown by the stipulated testimony in said cause, did or did not constitute prostitution or debauchery.

IX

The Court erred in finding that the doctrine of ejusdem generis had no application under the so-called Mann Act.

X

The Court erred in finding defendants guilty under the charges as laid down under the stipulated testimony in the case against the pleas of not guilty.

XI

The Court erred in finding that defendants were guilty of overt acts under the Mann Act, after having entered the status of religious plural marriage.

XII

The Court erred in failing to find that the commission of the acts charged under the stipulated testimony, were the result of honest, Christian and Biblical religious belief.

XIII

(a) The Court erred in finding defendants guilty because defendants violated a state statute, and that such violations alone constituted prostitution and debauchery.

(b) And the Court erred in this by reason of entire lack of jurisdiction under or by reason of the prohibitions of a state statute.

XIV

The Court erred in passing upon the morals, or the contrary, involved in a marriage relation, such being a peculiar and exclusive prerogative of State Legislators and State Courts.

XV

The Court erred in declaring upon the status of a marriage, stipulated to have been entered into under sincere religious belief in its validity by contracting parties; and is, and was, wholly without any jurisdiction so to adjudicate.

XVI

The Court erred in passing upon the verity of a religious tenet.

Reasons Why the Writs Should Be Granted

The Circuit Court of Appeals has held, by inescapable interpretation and construction, that the religious practice of "celestial marriage" as declared to be the "command of God" by the Prophet Joseph Smith, and as avowed to be such by the authorative "Doctrine and Covenants" of the "Mormon" Church, to this day, is a form of immorality, condemned by the general words "other immoral practice" contained in the Mann Act. That Court has *not* said that the same is a form of either "prostitution" or "debauchery," the specific forms of vice condemned by that statute.

To have reached such determination the following elements *must* precede as the inescapable basis therefor, viz:

(a) The "Revelation" to the Prophet Joseph Smith is not, in fact the word of God; for the word of God cannot require any immorality;

So that Court has passed upon the verity of that religious dogma and tenet, contrary to every prior declaration as to that power by this Court.

(b) Finding that "Revelation" to be false, that the practice of its requirements constitutes a form of immorality akin to "prostitution" or "debauchery," covered by the unlimited phrase "any other immoral practice" in the statute.

(c) That such being within the prohibition of the Mann Act, the doing of the prohibited act there banned, gives rise to the necessary criminal intent, viz: that the knowing violation of a prohibitory statute, sufficiently shows the criminal intent, without further proof of the mala fides and the character of the act as being *malum in se*.

All of which is quite in disregard of the rule of ejusdem generis; is inescapably necessary to make the *Reynolds*

case have application; is in disregard of the facts of the *Caminette* case, in which no religious issue was present; in contra to the decision of the Circuit Court of Appeals in the case of *Lewis* v. *United States*, 110 F. 2d 460, and the exact wording of the *Caminetti* case (242 U. S. 470), in which it is held that it is a *class* of conduct that the statute bans; is contrary to the declared purpose and scope of the statute set out in the *Mortensen* case (322 U. S. 369), and requires that the verities of the "revelation" be first declared upon as a matter of judicially determined ultimate fact.

These items of reasoning, forming the basis of this opinion and holding of the Circuit Court of Appeals, and its inescapable result, viz: the declaration by the Court upon the verities and morals of a religious tenet of more than a million American citizens (though but a few dissenters from that faith are here for punishment), the charlatanry or the God-inspired character of the Prophet Joseph Smith, and the verities of every one of those religious tenets announced by him (either as the true Prophet of God, or as a great religious deceiver), as being wholly false, or wholly true and so wholly moral or wholly immoral, presents a novel construction of law, heretofore condemned by this Honorable Court at every occasion when it has been before it, and the uniform holdings of this Court that religious truths may not be inquired into, much less judicially determined, by any Court.

That it is held in the *Reynolds* case, that religious belief does not supply a legal basis for transgression of the prohibitions of a police measure, is without force here, unless it be first declared that this Mann Act is a police measure; unless it be further held that religious forms of marriage which fail to conform to the generality of concept of the majority are, as a matter of law, immoral, and the religious concept thereof and travel thereunder in a continuance of

the status long theretofore established a matter of interstate commerce, within the meaning of the Constitutional powers.

That this particular form of marriage is here involved, means not that other form, generally held in disrespect, cannot be so ruled upon. By legislative enactment, should this conviction be upheld, it is quite possible that all marriages might be held to be immoral unless consummated before a priest of a selected religious organization, and so immoral, and so all people not conforming to the State Religion in such phase, sent to jail on crossing state lines after such marriage not by such established religious form and priest.

And so, we say: These cases are of such great public moment; the inescapable basic reasoning underlying their decision by the Circuit Court is of such a character as to require that the whole matter be here reviewed.

No person carrying his legal wife across state lines can be prosecuted under the Mann Act, we believe.

That relieves a "married" man from the penalties of the statute.

To support this opinion and to affirm this decision, the Federal Courts,—the Federal Government—must assume the prerogative of and the power to declare upon what form, or forms, of "marriage" it will countenance; and contrary-wise: what forms of "marriage" it will uphold as moral, and what forms of the same it will hold to be immoral.

To uphold this decision: All forms of travel by married or unmarried persons must be held to be within the meaning of the word "commerce" as used in the Mann Act, and so authorized by the grant of power to regulate interstate commerce made to the Federal Government. So to hold will be to expand that term and that power further than ever

it has been heretofore; will be to cover every type and form of travel, for whatever purpose, and with whatever object, across state lines; to expand that term to an extent hardly contemplated by the Fathers when the power to regulate what they deemed to be "commerce" was granted.

The issues here for determination are, we say: Quite novel and so deserving of the full deliberation on and determination by this Honorable Court.

Respectfully submitted,

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